

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 06F-BD 117

-SBD

3 **CAPITAL CERTIFIED MORTGAGE**
4 **LENDERS, INC. DBA CAPITAL**
5 **MORTGAGEBANC AND ALBERT R.**
6 **PINO, OWNER**

16150 N. Arrowhead Fountains Center, Ste. 240
Peoria, AZ 85382

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

Respondents.

8 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
9 makes the following Findings of Fact and Conclusions of Law and enters the following Order
10 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

11 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
12 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
13 hearing to contest this Order. The Request for Hearing shall be filed with the Arizona Department of
14 Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D) within **thirty (30) days** of
15 service of this Order and shall identify with specificity the action or order for which review is sought
16 in accordance with A.R.S. § 41-1092.03(B).

17 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
18 her own behalf or by counsel. If Respondents are represented by counsel, the information required
19 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
20 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
21 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
22 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
23 **physical accessibility.** Requests for special accommodations must be made as early as possible to
24 allow time to arrange the accommodations. If accommodations are required, call the Office of
25 Administrative Hearings at (602) 542-9826.

26 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.

§ 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an Informal Settlement Conference is requested, a person with the authority to act on behalf of the Department will be present (the "Department Representative"). Please note that in requesting an Informal Settlement Conference, Respondents waive any right to object to the participation of the Department Representative in the final administrative decision of this matter, if it is not settled. In addition, any written or oral statement made by Respondents at such informal settlement conference, including written documentation created or expressed solely for purposes of settlement negotiations, are inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules regarding informal settlement conferences.) Conversely, any written or oral statement made by Respondents outside an Informal Settlement Conference is not barred from being admitted by the Department in any subsequent hearing. If Respondents do not request a hearing, this Order shall become final.

If Respondents request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-905; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

FINDINGS OF FACT

1. Respondent Capital Certified Mortgage Lenders, Inc. dba Capital Mortgagebanc (hereinafter "CCML") is an Arizona corporation authorized to transact business in Arizona as a mortgage broker, license number MB 0009492, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of CCML's business is that of making, negotiating, or offering to make or negotiate loans secured by

1 Arizona real property, within the meaning of A.R.S. § 6-901(6).

2 2. Respondent Albert R. Pino ("Mr. Pino") owns CCML. Mr. Pino is authorized to transact
3 business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(E).

4 3. A March 22, 2006 examination of CCML, conducted by the Department, revealed that
5 CCML and Mr. Pino:

6 a. Failed to conduct the minimum elements of reasonable employee investigations
7 before hiring employees, specifically:

8 i. Failed to obtain credit explanations and conduct a further investigation
9 before hiring six (6) employees; and

10 ii. Failed to obtain a completed "I9" (Employment Eligibility Verification
11 Form) when hiring one (1) employee;

12 b. Failed to notify the Superintendent that its responsible individual ceased to be in
13 active management of the activities of the licensee within ten days of learning that fact;
14 specifically:

15 i. Albert D. Pino is now acting as Respondents' responsible individual
16 without having filed with the Department such changes;

17 c. Failed to obtain the Superintendent's prior approval before changing control;

18 i. On October 10, 2005, Albert D. Pino purchased all of Respondents'
19 outstanding shares of stock making him the sole owner of Capital
20 Certified Mortgage Lenders, Inc.;

21 d. Respondents' responsible individual on record, Albert R. Pino, failed to be in active
22 management of Respondents' activities; specifically:

23 i. Albert R. Pino, who is the Department's approved responsible
24 individual, is not "actively" involved in management; is not
25 supervising compliance with A.R.S. Title 6, Chapter 9 as it relates to
26 the licensee; and does not have the sufficient authority to ensure

1 compliance;

2 e. Collected compensation for rendering services as a real estate broker or real estate
3 salesman without providing clients the proper disclosure as a mortgage broker; specifically:

4 i. Respondents own and operate a mortgage broker and real estate office
5 out of the same building without disclosing this arrangement to clients;

6 f. Contracted with or paid compensation to unlicensed, independent contractors,
7 specifically:

8 i. Respondents paid a \$5,256.00 referral fee on May 5, 2005 to realtor
9 Cathy Piccinini.

10 4. These Findings of Fact shall also serve as Conclusions of Law.

11 **CONCLUSIONS OF LAW**

12 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
13 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
14 rules, and regulations relating to mortgage brokers.

15 2. By the conduct set forth in the Findings of Fact, CCML and Mr. Pino violated the following:

- 16 a. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum
17 elements of reasonable employee investigations before hiring employees;
18 b. A.R.S. § 6-903(F) by failing to notify the Superintendent that its responsible
19 individual ceased to be in active management of the activities of the licensee;
20 c. A.R.S. § 6-903(O) by failing to obtain the Superintendent's prior approval before
21 changing control;
22 d. A.R.S. § 6-903(E) and A.A.C. R20-4-102 by failing to have Respondents'
23 responsible individual be in active management of Respondents' activities;
24 e. A.R.S. § 6-909(I) by collecting compensation for rendering services as a real
25 estate broker or real estate salesman without providing the proper disclosure as a
26 mortgage broker; and

1 f. A.R.S. § 6-909(B) by contracting with or paying compensation to unlicensed,
2 independent contractors.

3 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant
4 to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take
5 the appropriate affirmative actions, within a reasonable period of time prescribed by the
6 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
7 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
8 suspension or revocation of Respondents' license pursuant to A.R.S. § 6-905; and (4) an order or any
9 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
10 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

11 **ORDER**

12 1. CCML and Mr. Pino shall immediately stop the violations set forth in the Findings of
13 Fact and Conclusions of Law. CCML and Mr. Pino:

- 14 a. Shall conduct the minimum elements of reasonable employee investigations
15 before hiring employees;
- 16 b. Shall notify the Superintendent that its responsible individual ceased to be in
17 active management of the activities of the licensee;
- 18 c. Shall obtain the Superintendent's prior approval before changing control;
- 19 d. Shall have Respondents' responsible individual be in active management of
20 Respondents' activities;
- 21 e. Shall not collecting compensation for rendering services as a real estate broker or
22 real estate salesman without providing clients proper disclosure as a mortgage
23 broker; and
- 24 f. Shall not contract with or pay compensation to unlicensed, independent
25 contractors.

26 2. Mr. Albert R. Pino and Capital Certified Mortgage Lenders, Inc. dba Capital

1 Mortgagebanc, shall immediately pay to the Department a civil money penalty in the amount of ⁵⁰⁰⁰ ~~ten~~
2 thousand dollars (\$~~10,000.00~~). Mr. Albert R. Pino and Capital Certified Mortgage Lenders, Inc. dba
3 Capital Mortgagebanc are jointly and severally liable for payment of the civil money penalty.

4 3. The provisions of this Order shall be binding upon Respondents, their employees,
5 agents, and other persons participating in the conduct of the affairs of Respondents.

6 4. This Order shall become effective upon service, and shall remain effective and
7 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
8 or set aside.

9 SO ORDERED this 7th day of June, 2006.

10 Felecia A. Rotellini
11 Superintendent of Financial Institutions

12 By Bruce Tunell
13 Bruce Tunell
14 Deputy Superintendent of Financial Institutions

15 **CONSENT TO ENTRY OF ORDER**

16 1. Respondents acknowledge that they have been served with a copy of the foregoing
17 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
18 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

19 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
20 the foregoing Findings of Fact, Conclusions of Law, and Order.

21 3. Respondents state that no promise of any kind or nature has been made to induce
22 them to consent to the entry of this Order, and that they have done so voluntarily.

23 4. Respondents agree to cease from engaging in the violative conduct set forth above in
24 the Findings of Fact and Conclusions of Law.

25 5. Respondents acknowledge that the acceptance of this Agreement by the
26 Superintendent is solely to settle this matter and does not preclude this Department, any other agency

1 or officer of this state or subdivision thereof from instituting other proceedings as may be
2 appropriate now or in the future.

3 6. Mr. Albert R. Pino, Owner, Capital Certified Mortgage Lenders, Inc. dba Capital
4 Mortgagebanc, on behalf of ~~The Money Source, L.L.C.~~ *Capital Certified mortgage lenders, Inc.* and himself represents that he is the Owner,
5 and that, as such, has been authorized by ~~The Money Source, L.L.C.~~ *CAPITAL Certified mortgage lenders, Inc.* to consent to the entry of this
6 Order on its behalf.

7 7. Respondents waive all rights to seek judicial review or otherwise to challenge or
8 contest the validity of this Cease and Desist Order.

10 DATED this 10 day of August, 2006.

12 By: 

13 Albert R. Pino, Owner
14 Capital Certified Mortgage Lenders, Inc.
15 dba Capital Mortgagebanc

15 ORIGINAL of the foregoing filed this 11th
16 day of June, 2006, in the office of:

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
20 ATTN: June Beckwith
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 COPY mailed/delivered same date to:

24 Craig A. Raby
25 Assistant Attorney General
26 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent
John Pettet, Senior Examiner
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Albert R. Pino, Owner
4 Capital Certified Mortgage Lenders, Inc.
5 Dbac Capital Mortgagebank
6 16150 N. Arrowhead Fountains Center, Ste. 240
7 Peoria, AZ 85382

8 Albert D. Pino
9 Statutory Agent for:
10 Capital Certified Mortgage Lenders, Inc.
11 Dbac Capital Mortgagebank
12 6301 W. Deer Valley Rd.
13 Glendale, AZ 85308

14 By: Barbara A. Carter
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